

Senate Bill No. 1998

CHAPTER 1002

An act to amend Sections 11126, 20300, 20392, 21404, 21490, 21546, 21547, 21548, 21620, 21621, 21622, 21623, 21623.5, 21757, 22825.1, 22825.17, 22827.5, 22871, and 77590 of, to amend and renumber Section 20486 of, to repeal Sections 21549, 22754.3, 22790.1, 22810.2, 22810.5, 22816.3, 22825.16, 22825.8, and 22840.1 of, and to repeal and add Section 20678 to, the Government Code, and to amend Item 9650-001-0001 of the Budget Act of 2000, relating to public employee retirement and health benefit programs, and making an appropriation therefor.

[Approved by Governor September 29, 2000. Filed
with Secretary of State September 30, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1998, Committee on Public Employment and Retirement. Public employees' retirement and health benefit programs: death benefits and technical changes.

(1) The Bagley-Keene Open Meeting Act generally requires all meetings of a state body to be open and public. Under the act, a state body or its designated representative is not prevented from holding closed sessions with its representatives in discharging the responsibilities of the state body under the Meyers-Miliias-Brown Act as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. The Meyers-Miliias-Brown Act governs local government employer-employee relations.

This bill would extend the above described provision to closed sessions of a state body or its designated representatives when discharging responsibilities of the state body under the Ralph C. Dills Act, which governs state employer-employee relations; the Bill of Rights for State Excluded Employees; and the Educational Employment Relations Act, which governs public school employer-employee relations.

(2) Under the Public Employees' Retirement Law, local safety members subject to the 2% at age 50 benefit formula pay contributions equal to 9% of compensation, as defined, and those members subject to the 3% at age 55 benefit formula pay contributions equal to 8% of compensation. Member contributions are deposited in the Public Employees' Retirement Fund, a continuously appropriated special fund.

This bill would provide that local safety members subject to either the 3% at age 50 or the 3% at age 55 benefit formula shall pay contributions equal to 9% of compensation. The bill would make an

appropriation by increasing the amount of employee contributions to the Public Employees' Retirement Fund. Operation of these provisions would be contingent upon the enactment of SB 528, as specified.

(3) Under the existing Public Employees' Retirement Law, a member may designate a beneficiary to receive benefits payable upon the member's death, provided that the designation is not in derogation of the community property rights of the member's spouse.

This bill would provide that, if the member is unmarried and has attained retirement age, that designation may not be in derogation of the rights of the member's unmarried, dependent, minor children.

(4) The existing Public Employees' Retirement Law prescribes various options for preretirement death benefits payable to the surviving spouse or children, or both, of a member, which benefits are generally based on the amount the member would have received had the member retired on the date of death. Existing law defines "surviving spouse" for purposes of one of those options.

This bill would provide that, if the member designated a beneficiary, those preretirement death benefits shall be based on a specified amount derived from the nonmember spouse's community property interest in the member's contributions and service credit. The bill would also expand the definition of "surviving spouse" for purposes of one of those options, as specified.

(5) The Public Employees' Retirement Law, the Judges' Retirement System II Law, and the Public Employees' Medical and Hospital Care Act establish retirement, health, and other benefits plans and programs for specified public employees.

This bill would make technical and conforming changes and repeal obsolete provisions of those laws.

(6) The Budget Act of 2000 appropriates funds for the state's contribution for the cost of health and dental benefits for annuitants and prescribes the maximum monthly amounts for the annuitants' contribution.

This bill would increase the state's contribution, as specified, thereby making an appropriation, and increase the maximum annuitant's contribution, as specified.

(7) The bill would incorporate additional changes to Sections 21622, 21623, and 21623.5 of the Government Code proposed by AB 50 to take effect if this bill and that bill are enacted and become effective on or before January 1, 2001, and this bill is enacted last.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 11126 of the Government Code is amended to read:

11126. (a) (1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.

(2) As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, and that notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void.

(3) The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body.

(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

(b) For the purposes of this section, “employee” does not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this section, “employee” includes a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(c) Nothing in this article shall be construed to do any of the following:

(1) Prevent state bodies that administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(2) Prevent an advisory body of a state body that administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters that the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant’s qualifications for licensure and an inquiry specifically related to the state body’s enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(3) Prohibit a state body from holding a closed session to deliberate on a decision to be reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 or similar provisions of law.

(4) Grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(5) Prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests that the donor or proposed donor has requested in writing to be kept confidential.

(6) Prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(7) (A) Prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

(B) However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties that the negotiations may concern and the person or persons with whom its negotiator may negotiate.

(C) For purposes of this paragraph, the negotiator may be a member of the state body.

(D) For purposes of this paragraph, “lease” includes renewal or renegotiation of a lease.

(E) Nothing in this paragraph shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (e).

(8) Prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(9) Prevent the Council for Private Postsecondary and Vocational Education from holding closed sessions to consider matters pertaining to the appointment or termination of the Executive Director of the Council for Private Postsecondary and Vocational Education.

(10) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or information the public disclosure of which is prohibited by law, or

from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.

(11) Require the Franchise Tax Board to notice or disclose any confidential tax information considered in closed sessions, or documents executed in connection therewith, the public disclosure of which is prohibited pursuant to Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of the Revenue and Taxation Code.

(12) Prevent the Board of Corrections from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(13) Prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(14) Prevent the State Board of Education or the Superintendent of Public Instruction, or any committee advising the board or the superintendent, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of, or pursuant to Chapter 8 (commencing with Section 60850) of, Part 33 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

(15) Prevent the California Integrated Waste Management Board or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this paragraph, a state body shall also be exempt from the provisions of paragraph (7) relating to the identification of real properties prior to the closed session.

(17) Prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), or

Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(d) (1) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

(2) Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against any person or entity under the jurisdiction of the commission.

(e) (1) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

(2) For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(A) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(B) (i) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body.

(ii) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to clause (i).

(C) (i) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

(ii) The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to subparagraph (A) or (B), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case

no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

(iii) For purposes of this subdivision, “litigation” includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(iv) Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(f) In addition to subdivisions (a), (b), and (c), nothing in this article shall be construed to do any of the following:

(1) Prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(2) Prevent the examining committee established by the State Board of Forestry and Fire Protection, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(3) Prevent an administrative committee established by the State Board of Accountancy pursuant to Section 5020 or 5020.3 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent an examining committee established by the Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant’s qualifications.

(4) Prevent a state body, as defined in Section 11121.2, from conducting a closed session to consider any matter that properly could be considered in closed session by the state body whose authority it exercises.

(5) Prevent a state body, as defined in Section 11121.7, from conducting a closed session to consider any matter that properly could be considered in a closed session by the body defined as a state body pursuant to Section 11121, 11121.2, or 11121.5.

(6) Prevent a state body, as defined in Section 11121.8, from conducting a closed session to consider any matter that properly could be considered in a closed session by the state body it advises.

(7) Prevent the State Board of Equalization from holding closed sessions for either of the following:

(A) When considering matters pertaining to the appointment or removal of the Executive Secretary of the State Board of Equalization.

(B) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(8) Require the State Board of Equalization to disclose any action taken in closed session or documents executed in connection with that action, the public disclosure of which is prohibited by law pursuant to Sections 15619 and 15641 of this code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of the Revenue and Taxation Code.

(9) Prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of the Office of Emergency Services or the Governor pursuant to Section 8590 concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(g) This article shall not prevent either of the following:

(1) The Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering matters pertaining to the recruitment or removal of the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

(2) The Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

SEC. 2. Section 20300 of the Government Code is amended to read:

20300. The following persons are excluded from membership in this system:

(a) Inmates of state or public agency institutions who are allowed compensation for the service they are able to perform.

(b) Independent contractors who are not employees.

(c) Persons employed as student assistants in the state colleges and persons employed as student aides in the special schools of the State Department of Education and in the public schools of the state.

(d) Persons employed as teacher-assistants pursuant to Section 44926 of the Education Code.

(e) Participants, other than staff officers and employees, in the California Conservation Corps.

(f) Persons employed as participants in a program of, and whose wages are paid in whole or in part by federal funds in accordance with, Section 1501 et seq. of Title 29 of the United States Code. This subdivision does not apply with respect to persons employed in job

classes that provide eligibility for patrol or safety membership or to the career staff employees of an employer.

(g) All persons who are members in any teachers' retirement system, as to the service in which they are members of any teachers' retirement system.

(h) Except as otherwise provided in this part, persons rendering professional legal services to a city, other than the person holding the office of city attorney, the office of assistant city attorney, or an established position of deputy city attorney.

(i) A person serving the university as a teacher in university extension, whose compensation for that service is established on the basis of class enrollment either actual or estimated, with respect to that service.

(j) A person serving a California State University as a teacher in extension service, whose compensation for that service is established on the basis of class enrollment either actual or estimated, with respect to that service.

(k) A teacher or academic employee of the university or any California State University who is otherwise fully employed and who serves as a teacher or in an academic capacity in any summer session or intersession, for which he or she receives compensation specifically attributable to that service in summer session or intersession, with respect to that service.

(l) A person who is employed under the Senate Fellows, the Assembly Fellows, or the Executive Fellows programs.

SEC. 3. Section 20392 of the Government Code is amended to read:

20392. "State peace officer/firefighter member" also includes officers and employees with the following class titles of:

Class Code	Classification
6875	Air Operations Officer I
1056	Air Operations Officer II
1053	Air Operations Officer III
6877	Air Operations Officer I (Maintenance)
6882	Air Operations Officer II (Maintenance)
1050	Air Operations Officer III (Maintenance)
8997	Arson and Bomb Investigator
9694	Board Coordinating Parole Agent, Youthful Offender Parole Board
9904	Correctional Counselor I
9903	Correctional Counselor II
9662	Correctional Officer

9911	Case Work Specialist, Youth Authority
9013	Deputy State Fire Marshal III (Specialist)
9086	Deputy State Fire Marshal
9010	Deputy State Fire Marshal III (Supervisor)
1077	Fire Apparatus Engineer
1095	Fire Captain
1072	Fire Control Aid
8979	Firefighter
1083	Firefighter I
1082	Firefighter II
9001	Firefighter (Correctional Institution)
8990	Firefighter/Security Officer
1047	Fire Prevention Officer I
1049	Fire Prevention Officer II
9090	Fire Service Training Specialist III
8418	Fish and Game Patrol, Lieutenant
8421	Fish and Game Warden, Department of Fish and Game
9039	Senior Food and Drug Investigator
9028	Food and Drug Program Specialist
9007	Food Technology Specialist
1060	Forestry Aid
1046	Forestry Pilot (Helicopter)
9579	Group Supervisor/Youth Correctional Officer
9578	Group Supervisor Trainee
6387	Heavy Fire Equipment Operator
1937	Hospital Peace Officer I
8416	Lieutenant Fish and Game Patrol Boat
0992	Lifeguard
8217	Medical Technical Assistant, Correctional Facility
1992	Museum Security Officer I
9701	Parole Agent I, Youth Authority
9765	Parole Agent I, Adult Parole
9696	Parole Agent II, Youth Authority (Specialist)
9763	Parole Agent II, Adult Parole (Supervisor)
9762	Patrol Agent II, Adult Parole (Specialist)
8215	Senior Medical Technical Assistant
8359	Sergeant, California State Police
8980	State Fire Marshal Trainee
9723	State Forest Ranger I (Nonsupervisory)



9724	State Forest Ranger II (Nonsupervisory)
0983	State Park Ranger I
8464	State Police Officer
8358	State Security Officer
8989	Captain Firefighter/Security Officer
8410	Warden—Pilot Department of Fish and Game
9581	Youth Counselor/Youth Correctional Counselor

A member who is employed in a position that is reclassified to state peace officer/firefighter pursuant to this section may make an irrevocable election in writing to remain subject to the service retirement benefit and the normal rate of contribution applicable prior to reclassification by filing a notice of the election with the board within 90 days after notification by the board. A member who so elects shall be subject to the reduced benefit factors specified in Section 21353 or 21354.1, as applicable, only for service also included in the federal system.

SEC. 4. Section 20486 of the Government Code, as added by Chapter 502 of the Statutes of 1996, is amended and renumbered to read:

20487. Notwithstanding any other provision of law, no contracting agency or public agency that becomes the subject of a case under the bankruptcy provisions of Chapter 9 (commencing with Section 901) of Title 11 of the United States Code shall reject any contract or agreement between that agency and the board pursuant to Section 365 of Title 11 of the United States Code or any similar provision of law; nor shall the agency, without the prior written consent of the board, assume or assign any contract or agreement between that agency and the board pursuant to Section 365 of Title 11 of the United States Code or any similar provision of law.

SEC. 5. Section 20678 of the Government Code, as amended by Senate Bill 528 of the 1999–2000 Regular Session, is repealed.

SEC. 5.5. Section 20678 is added to the Government Code, to read:

20678. (a) For each local safety member subject to Section 21362, 21362.2, or 21363.1, by reason of the amendment of his or her employer's contract, or on the later date of entrance into this system, the normal rate of contribution shall be 9 percent of the compensation paid to those members. For those members whose service is included in the federal system, the normal rate of contribution shall be 9 percent of the compensation in excess of one hundred thirty-three dollars and thirty-three cents (\$133.33) per month paid to those members.

(b) The normal rate of contribution for local safety members subject to Section 21363 shall be 8 percent of the compensation paid to those members. For those members whose service is included in

the federal system, the normal rate of contribution shall be 8 percent of the compensation in excess of two hundred thirty-eight dollars (\$238) per month paid to those members.

(c) Notwithstanding subdivision (b), the normal rate of contribution for local safety members of the City of Sacramento subject to Section 21363 shall be 9 percent of the compensation paid to those members.

(d) No adjustment shall be included in rates adopted under this section as the result of amendments hereto, changing the time at which members may retire or the benefits members will receive, because of time during which members have contributed at different rates prior to the adoption.

(e) This section shall be retroactive to January 1, 2000.

SEC. 6. Section 21404 of the Government Code is amended to read:

21404. Upon retirement for disability, a local miscellaneous member who is not subject to Section 21427 and who has attained the minimum age at which he or she may retire for service without an actuarial discount because of age, shall receive his or her service retirement allowance.

SEC. 7. Section 21490 of the Government Code is amended to read:

21490. (a) Except as provided in subdivision (b), a member may at any time, including, but not limited to, at any time after reaching retirement age, designate a beneficiary to receive the benefits as may be payable to his or her beneficiary or estate under this part, by a writing filed with the board.

(b) (1) No designation may be made in derogation of the community property share of any nonmember spouse when any benefit is derived, in whole or in part, from community property contributions or service credited during the period of marriage, unless the nonmember spouse has previously obtained an alternative order for division pursuant to Section 2610 of the Family Code.

(2) No designation may be made by an unmarried member who has attained the minimum age for voluntary service retirement applicable to the member in his or her last employment preceding death if that designation is in derogation of the rights of the member's unmarried, dependent children who are under the age of 18 years at the time of the member's death.

(c) The designation, subject to conditions imposed by board rule, may be by class, in which case the members of the class at the time of the member's death shall be entitled as beneficiaries. The designation shall also be subject to the board's conclusive determination, upon evidence satisfactory to it, of the existence, identity or other facts relating to entitlement of any person designated as beneficiary, and payment made by this system in reliance on any determination made in good faith, notwithstanding



that it may not have discovered a beneficiary otherwise entitled to share in the benefit, shall constitute a complete discharge and release of this system for further liability for the benefit.

SEC. 8. Section 21546 of the Government Code is amended to read:

21546. (a) Upon the death of a member who has attained the minimum age for voluntary service retirement applicable to the member in his or her last employment preceding death, and who is eligible to retire and in circumstances in which the basic death benefit is payable other than solely that of membership in a county retirement system, or a retirement system maintained by the university, a monthly allowance shall be payable as follows:

(1) To the member's surviving spouse as long as the spouse lives.

(2) To the children under the age of 18 years collectively if there is no surviving spouse or if the surviving spouse dies before all children of the deceased member attain the age of 18 years, until every child dies or attains the age of 18 years. No child shall receive any allowance after marrying or attaining the age of 18 years.

(b) The monthly allowance under this section shall be equal to one-half of, and derived from the same source as, the unmodified retirement allowance the member would have been entitled to receive if he or she had retired for service on the date of death. If, however, the member made a specific beneficiary designation under Section 21490, the monthly allowance shall be equal to one-half of that portion of the member's unmodified retirement allowance that would have been derived from the nonmember spouse's community property interest in the member's contributions and service credit.

(c) If a member does not have a surviving spouse nor any children under the age of 18 years at the time of death, no allowance shall be payable under this section.

(d) No allowance shall be payable under this section if a special death benefit is payable.

(e) (1) The allowance provided by this section shall be paid in lieu of the basic death benefit but a surviving spouse qualifying for the allowance may elect, before the first payment on account of it, to receive the basic death benefit in lieu of the allowance.

(2) The allowance provided by this section shall be paid in lieu of the basic death benefit but the guardian of the minor child or children qualifying for the allowance may elect, before the first payment on account of it, to receive the basic death benefit in lieu of the allowance. If an election of the basic death benefit is made, the basic death benefit shall be paid to all the member's surviving children, regardless of age or marital status, in equal shares.

(f) If the total of the payments made pursuant to this section are less than the basic death benefit that was otherwise payable on account of the member's death, the amount of the basic death benefit less any payments made pursuant to this section shall be paid in a

lump sum to the surviving children of the member, share and share alike, or if there are no children, to the estate of the person last entitled to the allowance.

(g) The board shall compute the amount by which benefits paid pursuant to this section exceed the benefits that would otherwise be payable and shall charge any excess against the contributions of the state so that there shall be no increase in contributions of members by reason of benefits paid pursuant to this section.

(h) As used in this section, “a surviving spouse” means a spouse who was either married to the member for at least one year prior to the member’s death, or was married to the member prior to the occurrence of the injury or the onset of the illness that resulted in death, and “child” includes a posthumously born child of the member.

(i) On and after April 1, 1972, this section shall apply to all contracting agencies and to the employees of those agencies with respect to deaths occurring after April 1, 1972, whether or not the agencies have previously elected to be subject to this section.

SEC. 9. Section 21547 of the Government Code is amended to read:

21547. (a) Notwithstanding any other provision of this article requiring attainment of the minimum age for voluntary service retirement to the member in his or her last employment preceding death, upon the death of a state member on or after January 1, 1993, who is credited with 20 years or more of state service, the surviving spouse, or eligible children if there is no surviving spouse, may receive a monthly allowance in lieu of the basic death benefit. The board shall notify the eligible survivor, as defined in Section 21546, of this alternate death benefit. The board shall calculate the monthly allowance that shall be payable as follows:

(1) To the member’s surviving spouse, an amount equal to the amount the member would have received if the member had retired for service at minimum retirement age on the date of death and had elected optional settlement 2 and Section 21459.

(2) If the member made a specific beneficiary designation under Section 21490, the monthly allowance shall be based only on that portion of the amount the member would have received described in paragraph (1) that would have been derived from the nonmember spouse’s community property interest in the member’s contributions and service credit.

(3) If there is no surviving spouse or the spouse dies before all of the children of the deceased member attain the age of 18 years, to the surviving children, under the age of 18 years, collectively, an amount equal to one-half of, and derived from the same source as, the unmodified allowance the member would have received if he or she had retired for service at minimum retirement age on the date of death. No child shall receive any allowance after marrying or



attaining the age of 18 years. As used in this paragraph, “surviving children” includes a posthumously born child or children of the member.

(b) This section shall only apply to members employed in state bargaining units for which a memorandum of understanding has been agreed to by the state employer and the recognized employee organization to become subject to this section, members who are excluded from the definition of state employees in subdivision (c) of Section 3513, and members employed by the executive branch of government who are not members of the civil service.

(c) For purposes of this section, “state service” means service rendered as a state employee, as defined in Section 19815. This section shall not apply to any contracting agency nor to the employees of any contracting agency.

SEC. 10. Section 21548 of the Government Code is amended to read:

21548. (a) The surviving spouse of a member who has attained the minimum age for voluntary service retirement applicable to the member in his or her last employment preceding death, and who is eligible to receive an allowance pursuant to Section 21546, shall instead receive an allowance that is equal to the amount that the member would have received if the member had been retired from service on the date of death and had elected optional settlement 2 and Section 21459.

(b) The surviving spouse of a member who has attained the minimum age for voluntary service retirement applicable to the member in his or her last employment preceding death, and who is eligible to receive a special death benefit in lieu of an allowance under Section 21546, may elect to instead receive an allowance that is equal to the amount that the member would have received if the member had been retired from service on the date of death and had elected optional settlement 2 and Section 21459.

(c) If the member made a specific beneficiary designation under Section 21490, the allowance under this section shall be based only on that portion of the amount the member would have received described in subdivision (a) or (b) that would have been derived from the nonmember spouse’s community property interest in the member’s contributions and service credit.

(d) The allowance provided by this section shall be payable as long as the surviving spouse lives. Upon the death of the surviving spouse, the benefit shall be continued to minor children, as defined in Section 6500 of the Family Code, or a lump sum shall be paid as provided under circumstances specified in Section 21546 or in Sections 21541 and 21543, as the case may be.

(e) The allowance provided by this section shall be paid in lieu of the basic death benefit, but the surviving spouse qualifying for the

allowance may elect before the first payment on account of it to receive the basic death benefit in lieu of the allowance.

(f) This section shall apply with respect to state members whose death occurs on and after July 1, 1976.

(g) All references in this code to Section 21546 shall be deemed to include this section in the alternative.

(h) This section shall not apply to any contracting agency nor to the employees of any contracting agency unless and until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts, except that an election among the employees is not required, or, in the case of contracts made after January 1, 1985, by express provision in the contract making the contracting agency subject to this section.

SEC. 11. Section 21549 of the Government Code is repealed.

SEC. 12. Section 21620 of the Government Code is amended to read:

21620. (a) Upon the death of any person, after retirement and while receiving a retirement allowance from this system, there shall be paid to his or her beneficiary as he or she shall nominate by written designation duly executed and filed with the board, the sum of five hundred dollars (\$500), to be provided from contributions by the state or contracting agency, as the case may be.

(b) This section shall apply to all contracting agencies and to the employees of those agencies.

SEC. 13. Section 21621 of the Government Code is amended to read:

21621. If the beneficiary of a member retired under this system is entitled to receive a comparable lump-sum death benefit from any other retirement system supported, in whole or in part, by public funds in which he or she was a member in employment subsequent to his or her last employment in which he or she was a member of this system, no payment shall be made under Section 21620, 21622, or 21623 providing for payment of a lump-sum death benefit to a member's designated beneficiary.

SEC. 14. Section 21622 of the Government Code is amended to read:

21622. (a) In lieu of benefits provided by Section 21620, upon the death of any person, after retirement and while receiving a retirement allowance from this system, there shall be paid to the beneficiary who he or she shall nominate by written designation duly executed and filed with the board, the sum of six hundred dollars (\$600), to be provided from contributions by the state.

(b) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods that, in the aggregate, are reasonable and that, in combination, offer the actuary's best estimate of anticipated experience under this system.

(c) The additional employer contributions required under this section shall be computed as a level percentage of member compensation. The additional contribution rate required at the time this section is added to a contract shall not be less than the sum of (1) the actuarial normal cost and (2) the additional contribution required to amortize the increase in accrued liability attributable to benefits elected under this section over a period of not more than 30 years from the date this section becomes effective in the public agency's contract.

(d) This section shall apply to members employed by a school employer.

(e) This section shall not apply to any contracting agency, except for those contracting agencies that are school employers and those school districts or community college districts, as defined in subdivision (i) of Section 20057, until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts, except an election among the employees is not required, or, in the case of contracts made after January 1, 1981, by express provision in the contract making the contracting agency subject to this section.

SEC. 14.5. Section 21622 of the Government Code is amended to read:

21622. (a) In lieu of benefits provided by Section 21620, upon the death of any person, after retirement and while receiving a retirement allowance from this system, there shall be paid to the beneficiary whom he or she shall nominate by written designation duly executed and filed with the board, the sum of six hundred dollars (\$600), to be provided from contributions by the employer.

(b) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods that, in the aggregate, are reasonable and that, in combination, offer the actuary's best estimate of anticipated experience under this system.

(c) The additional employer contributions required under this section shall be computed as a level percentage of member compensation. The additional contribution rate required at the time this section is added to a contract shall not be less than the sum of (1) the actuarial normal cost and, (2) the additional contribution required to amortize the increase in accrued liability attributable to benefits elected under this section over a period of not more than 30 years from the date this section becomes effective in the contracting agency's contract.

(d) This section shall not apply to any contracting agency, except for those contracting agencies that are school employers and those school districts or community college districts, as defined in subdivision (i) of Section 20057, until the agency elects to be subject to this section by amendment to its contract made in the manner

prescribed for approval of contracts, except an election among the employees is not required, or, in the case of contracts made after January 1, 1981, by express provision in the contract making the contracting agency subject to this section.

SEC. 15. Section 21623 of the Government Code is amended to read:

21623. (a) In lieu of benefits provided by Section 21620 or 21622, upon the death of any retired state member, after retirement and while receiving a retirement allowance from this system, there shall be paid to the beneficiary who he or she shall nominate by written designation duly executed and filed with the board, the sum of two thousand dollars (\$2,000), to be provided from contributions by the employer.

(b) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods that, in the aggregate, are reasonable and that, in combination, offer the actuary's best estimate of anticipated experience under this system.

(c) The additional employer contributions required under this section shall be computed as a level percentage of member compensation.

(d) This section shall not apply to any school employer, school member, contracting agency, or local member.

SEC. 15.5. Section 21623 of the Government Code is amended to read:

21623. (a) In lieu of benefits provided by Section 21620 or 21622, upon the death of any retired state or school member, after retirement and while receiving a retirement allowance from this system, there shall be paid to the beneficiary whom he or she shall nominate by written designation duly executed and filed with the board, the sum of two thousand dollars (\$2,000), to be provided from contributions by the employer.

(b) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods that, in the aggregate, are reasonable and that, in combination, offer the actuary's best estimate of anticipated experience under this system.

(c) The additional employer contributions required under this section shall be computed as a level percentage of member compensation.

(d) This section shall apply to a school employer and a retired school member whose death after retirement occurs on or after January 1, 2001. This section shall not apply to any contracting agency or local member, except those contracting agencies that are school employers and those school districts or community college districts as defined in subdivision (i) of Section 20057.



SEC. 16. Section 21623.5 of the Government Code is amended to read:

21623.5. (a) In lieu of benefits provided by Sections 21620 and 21622, upon the death of any local or school member, after retirement and while receiving a retirement allowance from this system, there shall be paid to the beneficiary who he or she shall nominate by written designation duly executed and filed with the board, the sum of two thousand dollars (\$2,000), three thousand dollars (\$3,000), four thousand dollars (\$4,000), or five thousand dollars (\$5,000), whichever amount is designated by the employer in its contract, to be provided from contributions by the employer.

(b) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable and which, in combination, offer the actuary's best estimate of anticipated experience under the system.

(c) The additional employer contributions required under this section shall be computed as a level percentage of member compensation.

(d) This section shall not apply to a contracting agency or school employer unless and until the agency or school employer elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts, except an election among the employees is not required or in the case of contracts made on or after January 1, 1999, except by express provision in the contract making the contracting agency or school employer subject to this section.

SEC. 16.5. Section 21623.5 of the Government Code is amended to read:

21623.5. (a) In lieu of benefits provided by Sections 21620 and 21622 upon the death of any local member, after retirement and while receiving a retirement allowance from this system, there shall be paid to the beneficiary whom he or she shall nominate by written designation duly executed and filed with the board, the sum of two thousand dollars (\$2,000), three thousand dollars (\$3,000), four thousand dollars (\$4,000), or five thousand dollars (\$5,000), whichever amount is designated by the employer in its contract, to be provided from contributions by the employer.

(b) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods that, in the aggregate, are reasonable and that, in combination, offer the actuary's best estimate of anticipated experience under the system.

(c) The additional employer contributions required under this section shall be computed as a level percentage of member compensation.

(d) This section shall not apply to a contracting agency unless and until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts, except an election among the employees is not required or in the case of contracts made on or after January 1, 1999, except by express provision in the contract making the contracting agency subject to this section.

SEC. 17. Section 21757 of the Government Code is amended to read:

21757. (a) If the retirement benefits of any member or his or her survivors or beneficiaries payable pursuant to Part 3 (commencing with Section 20000) would be limited by Section 415 of Title 26 of the United States Code, the board shall adjust the payment of those benefits, including, but not limited to, cost-of-living adjustments, cost-of-living banks, temporary annuities, survivor continuance benefits, or any combinations thereof, in order to maximize benefits within the limits of Section 415.

(b) The board shall establish a program of replacement benefits for members and any survivors or beneficiaries whose retirement benefits are limited by Section 415 and cannot be fully maximized pursuant to Part 3 (commencing with Section 20000). The benefits provided by that program may consist of deferred compensation, cash payments, health benefits, or supplemental disability benefits, as shall be determined by the board to give effect to the purpose of this part. The factors the board may take into consideration in making its determination shall include, but not be limited to, the following: legal constraints, administrative feasibility, and cost-effectiveness. The board may periodically modify the replacement benefits program and may add or eliminate any type of replacement benefits, as necessary, to carry out the purpose of this part. The administrative costs of the replacement benefits program shall be satisfied out of funds credited to the accounts of the participant members, and shall not be paid from the retirement fund or the retirement trust fund of a participating agency.

(c) The application of Section 415 to benefits provided under Part 3 (commencing with Section 20000) and this part shall not be taken into account for purposes of determining employers' or employees' contribution rates, until replacement benefits are implemented pursuant to Section 21758.

(d) Under no circumstances shall the replacement benefit program result in increased benefit costs to an employer, member, or annuitant.

SEC. 18. Section 22754.3 of the Government Code is repealed.

SEC. 19. Section 22790.1 of the Government Code is repealed.

SEC. 20. Section 22810.2 of the Government Code is repealed.

SEC. 21. Section 22810.5 of the Government Code is repealed.

SEC. 22. Section 22816.3 of the Government Code is repealed.

SEC. 23. Section 22825.1 of the Government Code is amended to read:

22825.1. (a) (1) Notwithstanding any other provision of this article, the employer's contribution, with respect to each state officer and employee or an annuitant who was in the employment or office including an academic position with a campus of the California State University or is a survivor of that person, shall be adjusted by the Legislature in the annual Budget Act. Annual adjustments of the dollar amounts therein shall be based upon the principle that the employer's contribution for each employee or annuitant shall be an amount equal to 100 percent of the weighted average of the health benefits plan premiums for employees or annuitants enrolled for self alone plus 90 percent of the weighted average of the additional premiums required for enrollment of family members in the four health benefits plans which have the largest number of enrollments during the fiscal year to which the formula applied.

(2) The employer's contribution under this section for each employee shall commence on the effective date of his or her enrollment.

(3) The contribution of each employee and annuitant shall be the total cost per month of the benefit coverage afforded him or her under the plan or plans less the portion thereof to be contributed by the employer.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 or Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 24. Section 22825.16 of the Government Code is repealed.

SEC. 25. Section 22825.17 of the Government Code is amended to read:

22825.17. A health benefit plan offered by the California Association of Highway Patrolmen pursuant to Section 22790 may rebate funds to participants enrolled in the employee organization's sponsored basic and supplement to Medicare plans in order to ensure that participant out-of-pocket costs remain at a reasonable and competitive level as determined by the Board of Trustees of the California Association of Highway Patrolmen Health Benefits Trust. The payments shall be made from the special reserves of the health benefits trust fund for that health benefit plan. The amount of funds shall be limited to that portion of special reserves that is in excess of the amount necessary to fund the risk up to the reinsurance attachment level. Administrative costs incurred by the state shall be

reimbursed by the health benefits trust fund for that health benefit plan.

This section shall become operative on July 1, 1992.

SEC. 26. Section 22825.8 of the Government Code is repealed.

SEC. 27. Section 22827.5 of the Government Code is amended to read:

22827.5. All moneys received pursuant to Section 22810.1 shall be deposited in the Public Employees' Contingency Reserve Fund. The board may transfer the complementary annuitant premiums into the Public Employees' Retirement Fund. The moneys in the fund are, notwithstanding Section 13340, continuously appropriated to the board, without regard to fiscal years, for payment of the complementary annuitant premiums and administrative expenses.

SEC. 28. Section 22840.1 of the Government Code is repealed.

SEC. 29. Section 22871 of the Government Code is amended to read:

22871. Notwithstanding any other provision of law, a domestic partner shall be included in the definition of a family member for purposes of Sections 22777, 22778, subdivision (a) of Section 22791, Sections 22811, 22811.5, 22812, 22813, 22815, subdivision (c) of Section 22816, Sections 22817, 22819, 22823, subdivision (a) of Section 22825, subdivision (a) of Section 22825.1, Section 22825.7, paragraph (1) of subdivision (b) of Section 22840.2, subdivision (f) of Section 22840.2, subdivision (b) of Section 22856, and Section 22859.

SEC. 30. Section 75590 of the Government Code is amended to read:

75590. (a) A surviving spouse of a judge who was eligible to retire pursuant to subdivision (a) of Section 75522 shall, within 90 days after the judge's death, elect to receive either of the following:

(1) A monthly retirement allowance equal to one-half of the judge's benefit factor computed as stated in subdivision (d) of Section 75522 as of the date of death, multiplied by the judge's final compensation multiplied by the number of years of service credit. This allowance shall be adjusted for changes in the cost of living as provided in Section 75523.

(2) The judge's monetary credits determined pursuant to Section 75520, including the credits added under subdivision (b) of that section computed to the last day of the month preceding the date of distribution.

(b) A surviving spouse of a retired judge who elected to receive a monthly allowance under subdivision (d) of Section 75522 or who was retired for disability and receiving an allowance under Section 75560.4 shall receive a monthly allowance equal to 50 percent of the deceased judge's last monthly retirement allowance. This allowance shall be adjusted for changes in the cost of living as provided in Section 75523.

(c) (1) Notwithstanding any other provision of this article to the contrary, the surviving spouse of a judge who (A) died in office, (B) had attained the minimum age for service retirement applicable to the judge preceding his or her death, with a minimum of 20 years of service, and (C) was eligible to receive an allowance pursuant to Section 75522, shall receive an allowance that is equal to the amount that the judge would have received if the judge had been retired from service on the date of death and had elected optional settlement 2 specified in subdivision (b) of Section 75571.

(2) A surviving spouse receiving an allowance pursuant to this subdivision shall have no other claim to benefits with respect to the Judges' Retirement Fund or with respect to any other provision of the Judges' Retirement System II Law.

(3) The benefits provided by this subdivision are only payable to the surviving spouse of a judge who elects to come within this subdivision. That election may be made at any time while the judge is in office and, once made, the election is irrevocable.

SEC. 31. Item 9650-001-0001 of the Budget Act of 2000 (Chapter 52 of the Statutes of 2000) is amended to read:

9650-001-0001—For support of Health and Dental Benefits for Annuitants. For the state's contribution for the cost of a health benefits plan and dental care premiums, for annuitants and other employees, in accordance with Sections 22825.7, 22828, 22829, and 22952 of the Government Code, which cost is not chargeable to any other appropriation 410,232,000

Schedule:

(a) Health benefit premiums 364,356,000

(b) Dental care premiums 45,876,000

Provisions:

1. The maximum transfer amounts specified in subdivision (b) of Section 26.00 of this act do not apply to this item.
2. Notwithstanding Section 22819 of the Government Code or any other provision of law, annuitants and their family members who were employed by the California State University, and who become eligible for Part A and Part B of Medicare during the 2000–01 fiscal year, shall not beenrolled in a basic health benefits plan during the 2000–01 fiscal

year. If the annuitant or family member is enrolled in Part A and Part B of Medicare, he or she may enroll in a supplement to the Medicare plan. This provision does not apply to employees and family members who are specifically excluded from enrollment in a supplement to the Medicare plan by federal law or regulation.

3. The maximum monthly contribution for an annuitant's health benefits plan shall be \$201 for a single enrollee, \$382 for an enrollee and one dependent, and \$488 for an enrollee and two or more dependents.

SEC. 32. Sections 5 and 5.5 of this bill shall become operative only if Senate Bill 528 is enacted and becomes operative on or before January 1, 2001.

SEC. 33. Section 14.5 of this bill incorporates amendments to Section 21622 of the Government Code proposed by both this bill and AB 50. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 21622 of the Government Code, and (3) this bill is enacted after AB 50, in which case Section 14 of this bill shall not become operative.

SEC. 34. Section 15.5 of this bill incorporates amendments to Section 21623 of the Government Code proposed by both this bill and AB 50. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 21623 of the Government Code, and (3) this bill is enacted after AB 50, in which case Section 15 of this bill shall not become operative.

SEC. 35. Section 16.5 of this bill incorporates amendments to Section 21623.5 of the Government Code proposed by both this bill and AB 50. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 21623.5 of the Government Code, and (3) this bill is enacted after AB 50, in which case Section 16 of this bill shall not become operative.

